IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of: **Robert Falotico, et al.**	Confirmation No.: **5950**
Application No.: **10/829,074**	Group Art Unit: **1615**
Filing Date: **April 21, 2004**	Examiner: **Sharon E. Kennedy**

For: **Drug/Drug Delivery Systems for the Prevention and Treatment of Vascular Disease**

ELECTRONICALLY FILED
DATE OF DEPOSIT: May 22, 2007

Mail Stop AF
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

COMMUNICATION REGARDING SUBSTANCE OF THE INTERVIEW

The instant paper is submitted in accordance with 37 C.F.R. § 1.133 and MPEP Section 713.04.

☒ **Remarks** begin on page 2 of this paper.

REMARKS

Substance of the Interview

An in-person interview was held on April 13, 2007, between Examiner Kennedy and Applicants' counsel, Maurice Valla and Joseph Lucci. Applicants thank the Examiner for the courtesy extended during the interview. No exhibits or demonstrations were provided. All of pending claims 15 to 30 were discussed.

The rejection under 35 U.S.C. § 112, second paragraph was discussed. Applicants expressed their position that the three articles submitted with the prior response showed that in-stent late loss was a widely used and understood parameter used by those in the art, and that the question to be asked when evaluating definiteness is whether one skilled in the art would understand the metes and bounds of the claim, when read in light of the specification. Nonetheless, the Examiner reasserted her position that the Boston Scientific-2006 article rendered the claims indefinite, because it showed disagreement among those skilled in the art as to the reliability of in-stent late loss as a predictor of efficacy. Agreement was not reached. Applicants were invited to appeal the issue.

The two references cited in the obviousness rejection, Mitchell et al., U.S. Patent No. 5,288,711 and Kamath et al., U.S. Patent No. 6,335,029, were also discussed. The examiner reiterated that no weight was given to the recitation in the claim that the device provide for less than a specified an in-stent late loss in diameter at 12 months following implantation when comparing the claimed subject matter to the prior art. No amendments were proposed during the interview, and no agreement was reached.

The rejections based on obviousness-type double patenting were also discussed. Applicants indicated their willingness to submit terminal disclaimers to obviate some, but not

all, of the rejections. Applicants again requested that these rejections be held in abeyance until otherwise allowable claims were agreed upon.

Date: May 22, 2007

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